

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street
Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue date: 21Jun2001

CASE NO. 2000-LHC-3388

OWCP NO. 13-96528

In the Matter of:

RODMAN SCACE, II
Claimant,

vs.

WESTERN DOCK ENTERPRISES,
Employer,

and

MAJESTIC INSURANCE CO.,
Carrier.

**DECISION AND ORDER GRANTING CLAIMANT'S REQUEST
TO CHANGE TREATING PHYSICIANS**

This claim arises under the Longshore and Harbor Workers' Compensation Act ("the Act"), as amended, 33 U.S.C. Section 901 *et seq.* On April 4, 2001, the date of trial, defense counsel presented the undersigned with two motions: (1) Motion to Dismiss Claimant's Request for Change in Treating Physician, and (2) Motion for Remand of Outstanding Medical Expense Costs. As both parties were prepared to proceed to trial, and Claimant had not had a chance to respond to these motions, a trial was held with the motions held in abeyance until April 16, 2001, when Claimant would submit responses thereto. Claimant did so timely. This Court granted Employer's Motion for Remand of Outstanding

Medical Expense Costs, but retained for decision Claimant's Request for Change in Treating Physician.¹

Subsequent thereto, Claimant and Employer submitted post-trial briefs, which are hereby admitted to the record as Administrative Law Judge Exhibits ("ALJX") 4 and 5² respectively. The Motion to Dismiss Claimant's Request for Change in Treating Physician and Response thereto as described above are also made part of the record herewith as ALJX-6 (Employer's Motion) and ALJX-7 (Claimant's Response thereto). In addition, the following exhibits were submitted by the parties at trial and were admitted to the record at that time: Claimant's Exhibits ("CX") A-O, and Employer's Exhibits ("EX") 1-22, 28-34, 36-39, 42 (for 11/1/99, 1/27/00, and 2/18/00 only), and 43.

The only issue remaining for decision is: whether Claimant's request for change in his primary treating physician is allowable under the Act. After a thorough review of the facts and the relevant law, this Court has determined that Claimant has the right to change his treating physician from Dr. Ramirez to Dr. Kornfeld.

Summary of Facts

Background and Medical History

Claimant suffered a work-related injury to his lower back while working for Western Dock Enterprises on October 4, 1996. His treating physician since that time has been Archimedes Ramirez, M.D., a neurological surgeon. EX-31, p.131. At the time of Claimant's initial hearing in this case over which Judge Alexander Karst presided, the parties stipulated, and Judge Karst accepted, the following findings: Claimant developed post-laminectomy syndrome pain as a result of the surgery done to correct the injury.³ He also developed degenerative disc disease at multiple levels with grade three annular fissuring and degenerative changes at L3-4, and L5-S1. Claimant developed foraminal stenosis at the right L5-S1 and L4-5 and bilaterally at L3-4. He developed degenerative disc disease at the lumbar region.

¹Another issue before the Court has been resolved by the parties. According to Claimant's Post-Trial Brief at p.2, after a telephone conference held with the parties and the undersigned, Majestic offered to pay \$1,000 for Claimant's hospital bed and conveyed such offer to HELPCard, the credit card company through which he had purchased the bed. HELPCard accepted the offer. Therefore, the only remaining issue before the Court is Claimant's request for a change in his treating physician.

²ALJXs 1-3 were admitted at trial.

³According to Dr. Ramirez's testimony, such a condition is the result of scar tissue, and occurs in 1% to 3% of patients; it is very painful and is lifelong. EX-31, p.132.

Consequently, he developed chronic reactive depression⁴ as a result of his injuries. ALJX-3.

On March 25, 1999, Judge Alexander Karst issued a Decision and Order awarding Claimant temporary total disability compensation from October 4, 1996, until further notice. ALJX-3. Claimant developed worsening symptoms after the hearing and issuance of the Decision and Order. Before his hospitalization in February 2000, Claimant was attending the pain clinic at Kentfield Rehabilitation, having nerve root blocks, and wearing a body jacket to stabilize his spine. CX-D, parts 6-7. In addition, Claimant was attending psychotherapy with Dr. Levinson. By February 23, 1999, Dr. Ramirez reported that the nerve blocks were not working and that Claimant had become suicidal one and a half months prior and was admitted to the Oak Crest psychiatric unit for two days.⁵ *Id.* at part 8. Claimant underwent another surgery (interbody fusion) to his back on March 8, 1999. *Id.* at part 12. On February 5, 2000, Claimant was brought to Novato Community Hospital after he made a suicidal gesture by self-inflicting lacerations to his right neck and left wrist. He was on alcohol and pain medications. CX-E. On February 16, 2000, Dr. Ramirez wrote Linda Stavosky, the claims examiner for Carrier⁶ stating that Claimant had not been in compliance with his recommendations since September 10, 1999 and that Dr. Ramirez was unable to trace him. Claimant had recently been admitted to Marin General Hospital Crisis Unit because of suicidal ideation; he was self-medicating with narcotics prescribed by the Kentfield pain clinic. Claimant had missed appointments with Dr. Ramirez and with the facility engaged to do additional MRIs. Dr. Ramirez stated that he had been in touch with Dr. Howard Kornfeld who was managing Claimant's alcoholism and pain medication. Dr. Kornfeld had been called in by Dr. Zwerin when Claimant was being admitted to Marin General Hospital on or around February 11, 2000. CX-G, p.107. Dr. Zwerin was the doctor who was originally managing Claimant's pain at Kentfield Rehabilitation. CX-D, part 11.⁷

⁴After six months postoperative, Dr. Ramirez recommended a pain clinic and psychological counseling; Claimant was referred to Kentfield Rehabilitation. EX-31, pp.134-135.

⁵According to Claimant's testimony at trial, he was hospitalized in January 1999 after calling Dr. Levinson and telling her that he was thinking of committing suicide with a shotgun. Dr. Levinson called the sheriff who then came to Claimant's house, took his shotgun, and put him in the hospital on a 72-hour hold. Claimant testified that the suicidal thoughts were brought on by him having lost control of his bladder and bowels. Tr.114-115.

⁶Ms. Stavosky testified at trial that she is the Area Claims Manager for San Francisco, has been with Majestic for five years, and in her current position for the past two years. She has been in the workers' compensation field and has carried longshore cases since 1974. Her duties are to oversee the department and the other claims examiners and to carry a "very limited" caseload herself. She has handled Claimant's case for the past two years. One-third to one-half of her cases are longshore. Tr.150-151.

⁷In response to a question regarding Dr. Ramirez's assertion in his February 16, 2000 letter that Claimant was not in compliance, Claimant testified that he had no idea he had to see Dr. Ramirez

On February 29, 2000, Dr. Kornfeld admitted Claimant to Marin General Hospital because of a suicidal gesture when he mixed his narcotic medications with alcohol. Claimant was discharged on March 4, 2000. Dr. Ramirez made the following diagnosis at that time:

[T]his patient basically has a post laminectomy syndrome manifested by chronic back, bilateral hip and leg pain with neuropathic anterotibial pain in the L4 dermatome from his previous surgery at L4-5 for far lateral discs, which required an extraforaminal approach in October of 1996. He has had the paraneural fibrosis at L4 dermatoma from his previous surgery in October of 1996 and he continues to have these fibroses at the same nerve root ganglia at L4. He has post laminectomy syndrome from both the first and second surgeries. His problem is complicated by substance abuse of his narcotic medications and alcohol, for which Dr. Kornfeld and Dr. Marvin Zwerin are involved in his pain control. *It is imperative that this patient's pain management be controlled on a daily dose basis by Dr. Kornfeld, who is monitoring this patient who is abusing the drugs.*

Id. at part 12, pp.67-68 (emphasis mine).

On March 29, 2000, Claimant underwent a third back surgery. *Id.* at part 14.

On April 5, 2000, Dr. Ramirez wrote to Linda Stavosky, a week after the above surgery, stating that he was unable to discharge Claimant from Marin General Hospital because Carrier was refusing care and treatment by Dr. Kornfeld. Dr. Ramirez stated, in pertinent part:

Dr. Kornfeld has managed this patient's postoperative pain control since his surgery and the services and expertise of Dr. Kornfeld as an expert in pain and detox program is [sic] absolutely necessary for control of this patient's postoperative pain. . . . Understand someone in your office is practicing medicine without a license and refusing any kind of care and consultation from Howard Kornfeld, M.D. who is needed in this patient's postoperative care for which I have no expertise. . . . This patient cannot be discharged without guarantee from your insurance carrier that Howard Kornfeld, M.D., will be involved in management of this patient's postoperative pain control.

Id. at part 15, p.74.

On May 23, 2000, in a letter to Claimant's attorney, Dr. Ramirez stated:

because he was seeing Dr. Zwerin and Dr. Ramirez had told him that Dr. Zwerin should be Claimant's primary treating physician, a recommendation with which Dr. Zwerin indicated agreement. Claimant therefore thought he had to answer to Dr. Zwerin rather than Dr. Ramirez. In addition, it was Claimant's impression that the two doctors saw each other on a regular basis since Dr. Ramirez had other patients at the Kentfield clinic. Tr.118-119.

In light of my referral of Rodman Scace to Howard Kornfeld, M.D. for ongoing monitoring and continued medical treatment and the fact that as a neurosurgeon I am not an appropriate physician to provide the extent of monitoring that Rodman Scace requires[,] I am therefore recommending that Mr. Rodman Scace's primary treating physician be redesignated from myself to Howard Kornfeld, M.D. and I would be a consulting neurosurgeon to treat his neurosurgical problem.

CX-B.

On June 5, 2000, Dr. Ramirez reported that Claimant was suffering from impotence and urinary incontinence. Claimant was seeing Dr. Kornfeld for pain management twice a week, and Dr. Hood for psychiatric treatment twice a week. CX-D, part 16. On July 20, 2000, Dr. Ramirez wrote to Linda Stavosky and stated that "[s]ince I am not an expert on pain management and opiate management of patients who are addicted to opiates or dependant on opiates I am deferring to Howard Kornfeld, M.D., who is an expert in this field." *Id.* at part 17.

By November 7, 2000, Claimant had developed fecal incontinence in addition to urinary incontinence. He continued to see both Dr. Kornfeld for pain management and Dr. Hood for psychotherapy. *Id.* at part 18. At that time, Dr. Ramirez recommended that Dr. Kornfeld readmit Claimant to Marin General Hospital for reevaluation of his pain medication and management since his care and medication were not "really helping" his pain problem. Dr. Ramirez also stated that Claimant needed to continue his pain management with Dr. Kornfeld and Dr. Hood. *Id.*, p.94.

At his deposition on February 22, 2001, Dr. Ramirez recommended that Claimant continue on a "maintenance program" with Dr. Kornfeld, and

I would really like to be a consultant to deal with managing his back problem and have Dr. Kornfeld manage his overall problems, which is [sic] complex. And he has been very good in terms of making sure that I am called. He knows about his neurological problems. He knows about his psychiatric problems.

So you need to have somebody who is sort of a quarterback in doing this, and I am just not a specialist in that. And I would rather it be someone who is going to deal with the specific problem related to his neurological and spine problem, and that's what I've done. . . .

As a treating physician, I don't think that I'm the kind of guy that's going to be able to treat the chronic problem that he's going to have, which is his chronic pain problem and his psychiatric and neurological problems.

EX-32, p.192.

Dr. Howard Kornfeld

Dr. Kornfeld, although originally specializing in emergency medicine, has practiced since 1992 as

a pain management and addiction management specialist, with his group practice in Mill Valley, California. His team, in addition to himself, consists of a psychiatrist, a psychologist, a nurse-practitioner, and a physical therapist.

Dr. Kornfeld is member of the American Academy of Pain Medicine, is certified by the American Society of Addiction Medicine, is a Diplomate of the American Board of Emergency Medicine, is an Assistant Clinical Professor at the Department of Medicine, University of California, San Francisco (“UCSF”), is a founding member of the International Society of Addiction Medicine, and an Affiliate Member of the American Academy of Addiction Psychiatry. He is also a consultant in pain management and addiction medicine at UCSF,⁸ Mt. Zion Pain Management Center. CX-F. In addition, Dr. Kornfeld is a psychopharmacologist, according to his testimony at trial. Tr.42.

Dr. Kornfeld began treating Claimant when he was admitted to the hospital on February 11, 2000 after a suicide gesture. Dr. Zwerin asked Dr. Kornfeld to admit Claimant to the hospital. Dr. Kornfeld testified that Claimant was referred to him because he takes patients from Kentfield (Dr. Zwerin’s facility) when the “boundaries cross from pain to psychiatric and addiction behavior.” Tr.38-39.

Dr. Kornfeld testified that he does not usually accept workers’ compensation cases because of the burden of paperwork and approvals they entail; however, Dr. Zwerin personally asked him for his help with this case and assured him that the medical bills were being paid. According to Dr. Kornfeld, after the weekend had passed (Claimant was admitted on a Friday evening), he called Ms. Stavosky, the claims examiner for Majestic in order to get treatment authorized.

Initially, Claimant had difficulty keeping his appointments with Dr. Kornfeld, and consequently returned to the hospital at the end of February. Dr. Kornfeld explained that it was not unusual for it to take some time to get pain and addiction under control:

[B]y the time I saw Mr. Scace in February of 2000, he had been suffering from this injury for more than three years, and he had had two major operations, and he had been at the Kentfield Pain Hospital . . . for a large . . . chunk of that time with them giving the best pain management they knew how to do, multi-disciplinary, and the prognosis for the treatment I was going to undertake would be . . . a long-term course of treatment with incremental and gradual improvement, step-by-step, but that it wouldn’t be something that would be expected to turn around in a matter of weeks.

Tr.44.

Mr. Scace had a third neurological surgery in March 2000. Dr. Kornfeld testified that Claimant had a tremendous increase in pain following that surgery, quite high compared to any other time Dr.

⁸University of California, San Francisco

Kornfeld treated Claimant. Tr.55. Because Dr. Kornfeld had had a difficult time establishing a collaborative relationship with Majestic,⁹ he imposed conditions on Claimant's release from the hospital after this surgery: (1) that he (Kornfeld) be recognized as the patient's pain management physician; (2) that any medications he wished to prescribe be covered; (3) that daily visits, transportation and home care be covered; and, (4) that Dr. Hood be recognized as Claimant's psychiatric counselor. Tr.57.

In response to a question regarding Employer's expert Dr. Sigal's statement that Claimant is "histrionic, dramatic, and manipulative," EX-22, Tr.60, with the implication that Claimant may have been manipulative in order to obtain drugs to feed an addiction, Dr. Kornfeld testified:

[O]ne of the reasons that I was asked to see Mr. Scace is so that there could be a specialist in place who treats . . . addiction disorders that would be characterized by a patient magnifying their symptoms of pain in order to get drugs to feed an addiction, rather than receive medication to treat pain.

Tr.63.

Dr. Kornfeld further testified that his area of specialty is the interaction between addiction and pain, i.e., distinguishing between addictive or harmful behavior with the use of medications and the use of medications to heal. *Id.* Dr. Kornfeld explained the difficulty of treating Mr. Scace after two suicide attempts, three surgeries, and extensive dysfunction in terms of incontinence and neuropathic pain syndrome which affected his testicle, leg, etc. Tr.67. Dr. Kornfeld continued:

I truly believe that the reason I haven't progressed as quickly with Mr. Scace as my other patients is the problems in . . . him getting his medications. He often goes for days without the medication I prescribe.

Tr.68.

Dr. Kornfeld explained that there was a continuous pattern of the insurer not authorizing medications on the same day or even the following day after prescribed. Tr.69

After consultation with Dr. Ramirez, Dr. Kornfeld admitted Claimant to the hospital in November 2000 after nine months of trying to get Claimant on an appropriate pain medication regime. Claimant's regime was not working, he was nauseated and dehydrated, and his pain was unmanageable. Claimant was taken off oral medications and put on intravenous fluids and intravenous pain medications. Tr.94.

⁹Dr. Kornfeld testified that this was the first time he had ever had such difficulty developing communication and a common plan of action with an insurer regarding a seriously ill patient. Tr.57-58.

At the time of the trial in the current case, Dr. Hood, a board certified psychiatrist, was treating Claimant in marital therapy regarding the issue of his sexual dysfunction. Claimant now sees Dr. Parker, a psychologist, for individual therapy. Tr.99. Dr. Kornfeld goes through Dr. Ramirez to get all of these treatment modalities authorized and then sends the authorizations to Majestic. This is time-consuming and delays the insurer's authorization. Tr.100.¹⁰

Claimant's Testimony

Claimant testified that he started seeing Dr. Kornfeld after his February 2000 suicide attempt and stated that Dr. Kornfeld had

given me my hope back. He's teaching me how to deal with my limitations. He's supplied me with a team that's been giving me unlimited support. Dr. Kornfeld calls me at home all the time, even on weekends, to see how I'm doing. He really cares about me, and I . . . asked why . . . he go[es] out of his way to do anything, . . . he tells me that I'm worth it. He really likes me.

Tr.124. Claimant further testified that he has made no further suicide attempts since beginning treatment with Dr. Kornfeld. He wants Dr. Kornfeld to be his primary treating physician because Dr. Ramirez is so busy and Dr. Kornfeld knows more about pain treatment. *Id.*

Claimant testified that he has only had a problem with alcohol when he runs out of pain medications. Tr.136. Claimant stated that he is still taking pain medications which cause nausea, and he is still smoking but at the rate of four cigarettes a day rather than his prior habit of one pack a day. Tr.140.

Claimant further testified that he did not return to the urologist, Dr. Bennett, despite Dr. Ramirez's recommendations, because he was afraid of "what they do." Tr.143-144. In addition, he did not like being catheterized by female nurses which he found embarrassing. Tr.148.

Analysis

Employer contends that the administrative law judge does not have jurisdiction to decide whether or not a claimant may change treating physicians. Employer's argument is based on *Jackson v. Universal Maritime Service Corporation*, 31 BRBS 103 (1997). In *Jackson*, the employer requested the district director to approve a change in the claimant's treating physician, against the wishes of the claimant. The director did so, and a dispute ensued as to whether the claimant could have an administrative law judge

¹⁰Ms. Stavosky testified that her management duties take her away from the office. Therefore, the turnaround time for authorization of prescriptions takes from 24 hours to two to three days, depending on what needs to be clarified. Tr.152-153.

decide the case or whether an appeal should go directly to the Benefits Review Board. The Board determined that only the director had the authority to change the claimant's treating physician under these circumstances, and that such decision was discretionary and did not involve fact-finding and was therefore appealable directly to the Board.¹¹ However, in cases necessitating fact-finding, such as *Sanders v. Marine Terminals Corporation*, 31 BRBS 19 (1997), the case would properly be referred to an administrative law judge for a hearing. In *Sanders*, the issue was whether or not housekeeping assistance ordered by the claimant's treating physician was necessary.

At first blush, it would appear that an administrative law judge has no jurisdiction over a claimant's request to change his treating physician. However, the law is not entirely clear. The *Jackson* case analyzed a request by the *employer* to change the claimant's treating physician, not a request by the *claimant* himself. A reading of the black letter law is somewhat helpful. Section 7(b) of the Act states in pertinent part:

The Secretary shall actively supervise the medical care rendered to injured employees, . . . shall have the authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on [his] own initiative or *at the request of the employer*, order a change of physicians or hospitals when in [his] judgment such change is desirable or necessary in the interest of the employee. . . .

33 U.S.C. § 907(b) (emphasis mine).

It is helpful to compare this section of the Act to the one concerning an *employee's* request for a change in his treating physician. Section 7(b) of the Act provides that "[c]hange of physicians at the request of the employees shall be permitted in accordance with regulations of the Secretary." 33 U.S.C. § 907(b). Section 702.406(a) of the regulations provides:

Whenever the employee has made his initial, free choice of an attending physician, he may not thereafter change physicians without the prior written consent of the employer (or carrier) or the deputy commissioner. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for, and appropriate to, the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a

¹¹The Board has determined that certain acts by the Director are discretionary and are directly appealable to the Board, i.e.: (1) when a settlement agreement has been presented to the Director for approval, *Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773 (5th Cir. 1988); (2) when the Director is asked to pay for the claimant's vocational rehabilitation, *Cooper v. Todd Pacific Shipyards Corp.*, 22 BRBS 37 (1989); (3) when the Director is requested to approve a petition for attorney's fees, *Glenn v. Tampa Ship Repair & Dry Dock*, 18 BRBS 205 (1986); (4) when the Director denies medical fees to treating doctors, *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347, 353 (1994).

showing of good cause for change.

20 C.F.R. § 702.406(a); see also 33 U.S.C. § 907 (c)(2).

Thus, the conclusion is inevitable. The procedure for a change in treating physicians when it is at the request of a claimant is different from the one used when the employer makes such a request. Therefore, *Jackson* is not applicable. Since fact-finding is required to determine what Claimant's needs are for a specialist as his primary treating physician at this time, and/or whether good cause exists for a change in Claimant's primary treating physician, the Court has jurisdiction over the issue of change of primary treating physician at *Claimant's* request.

According to 20 C.F.R. § 702.406(a), the claimant is required to request a change of treating physicians of the employer or deputy commissioner(director) and get his or her written consent. Such request *shall* be given where the employee's initial choice is not of a specialist whose services are necessary or appropriate for the proper care or treatment of his compensable disease or injury. Or, in all other cases, consent may be given upon a showing of good cause. *Id.*

Here, although Dr. Ramirez was the appropriate specialist when Claimant's spinal injury was being treated, he is in a different phase now. Dr. Ramirez has repeatedly stated that he wishes Dr. Kornfeld, a pain specialist, to be Claimant's primary treating physician because Claimant now requires constant attention for control of pain and attendant potential addiction, an area in which Dr. Ramirez does not have the expertise nor the necessary time. Dr. Kornfeld's credentials are specifically related to Claimant's current needs for a pain and addiction specialist. Thus, based on Claimant's condition at this time, the *appropriate* and *necessary* specialist, consistent with the law, is a pain specialist. Dr. Kornfeld is that pain specialist.

Moreover, when a claimant already has a treating physician, and that treating physician makes a referral to a specialist, the employer's consent is not required. *Armfield v. Shell Offshore, Incorporated*, 25 BRBS 303 (1992). Here, Claimant's treating physician, Dr. Ramirez, referred him to Dr. Kornfeld, a pain specialist, just as in *Armfield*, the claimant's treating physician referred him to a psychiatrist for psychiatric treatment. Employer here does not dispute payment to Dr. Kornfeld, but does disagree that Dr. Kornfeld should be designated Claimant's chief treating physician (as opposed to an ancillary treater).

Assuming arguendo that the undersigned had not determined that Employer must allow for a change to Dr. Kornfeld as the appropriate and necessary specialist, such consent may be given for "good cause." The facts support a finding of good cause. Dr. Ramirez not only admits that he does not have the appropriate expertise, nor the time to treat Claimant's very severe pain condition and attendant potential addiction and psychiatric problems, he pleads in the strongest terms for a change to Dr. Kornfeld as the primary treating physician:

"It is imperative that this patient's pain management be controlled on a daily dose basis by Dr.

Kornfeld, who is monitoring this patient who is abusing the drugs.” CX-D, part 12, p.68.

“Dr. Kornfeld has managed this patient’s postoperative pain control since his surgery and the services and expertise of Dr. Kornfeld as an expert in pain and detox program is [sic] absolutely necessary for control of this patient’s postoperative pain . . . for which I have no expertise.” *Id.* at part 15, p.74.

“[A]s a neurosurgeon I am not an appropriate physician to provide the extent of monitoring that Rodman Scace requires[.] I am therefore recommending that Mr. Rodman Scace’s primary treating physician be redesignated from myself to Howard Kornfeld, M.D. and I would be a consulting neurosurgeon to treat his neurosurgical problem.” CX-B.

“I would really like to be a consultant to deal with managing his back problem and have Dr. Kornfeld manage his overall problems. . . . [Y]ou need someone who is sort of a quarterback in doing this. . . . As a treating physician, I don’t think that I’m the kind of guy that’s going to be able to treat the . . . chronic pain problem and his psychiatric and neurological problems.” EX-32, p.192.

The evidence shows that Claimant has serious, chronic pain and needs to have a close relationship with his primary treating physician. As of February 2000, he had made three suicide gestures. Since Dr. Kornfeld has been managing Claimant’s care he has made no further suicide attempts. Dr. Kornfeld is a well-qualified pain specialist who is able to care for Claimant as frequently as necessary. Claimant is able to contact Dr. Kornfeld with no difficulty. The nature of treating someone with chronic pain overlaid by addictive behavior requires regular and frequent contact with the patient and constant titration of medications. Therefore, it is imperative that Dr. Kornfeld be in charge of Claimant’s case on a daily basis, and not be compelled to get Claimant medications and treatments by the circuitous and time-consuming route of going through Dr. Ramirez, who is often unavailable. Needless to say, designating Dr. Kornfeld the primary treating physician will not solve the problems that have bedeviled this case unless Carrier is fully cooperative with Dr. Kornfeld and both work as a team in providing Claimant with appropriate care. However, the Court concludes, based on the very ample evidence, that there is good cause for a change to Dr. Kornfeld as the primary treating physician.

Employer argues against a finding of good cause based on Claimant’s lack of improvement under Dr. Kornfeld’s care. However, until Dr. Kornfeld and Carrier are working as a team, it will be impossible to determine the cause of Claimant’s lack of improvement. What is clear is that Dr. Kornfeld and Claimant have established a viable doctor-patient relationship and Dr. Kornfeld has the expertise in the area specific to Claimant’s current needs. The Court therefore concludes without hesitation that good cause has been established for a change to Dr. Kornfeld as Claimant’s primary treating physician.

ORDER

1. Employer/Carrier shall recognize Dr. Kornfeld as Claimant's primary treating physician and shall pay for all reasonable and necessary medical treatment as the nature of Claimant's condition may require in accordance with Section 7 of the Act.
2. Carrier shall make every effort to establish a cooperative relationship in which Claimant's medications and other treatment modalities are provided on a timely basis according to the treatment plan of Dr. Kornfeld, and shall defer to Dr. Kornfeld's judgment as to the type and timing of such medications and treatment modalities.

Counsel for Claimant is hereby ordered to prepare an Initial Petition for Fees and Costs and directed to serve such petition on the undersigned and on the counsel for Employer/Carrier within 21 days of the date this Decision and Order is served. Counsel for Employer/Carrier shall provide the undersigned and Claimant's counsel with a Statement of Objections to the Initial Petition for Fees and Costs within 21 days of the date the Petition for Fees is served. Within ten calendar days after service of the Statement of Objections, counsel for Claimant shall initiate a verbal discussion with counsel for Employer/Carrier in an effort to amicably resolve as many of Employer/Carrier's objections as possible. If the two counsel thereby resolve all of their disputes, they shall promptly file a written notification of such agreement. If the parties fail to amicably resolve all of their disputes within 21 days after service of Employer/Carrier's Statement of Objections, Claimant's counsel shall prepare a Final Application for Fees and Costs which shall summarize any compromises reached during discussion with counsel for Employer/Carrier, list those matters on which the parties failed to reach agreement, and specifically set forth the final amounts requested as fees and costs. Such Final Application must be served on the undersigned and on counsel for Employer/Carrier no later than 30 days after service of Employer/Carrier's Statement of Objections. Within 14 days after service of the Final Application, Employer/Carrier shall file a Statement of Final Objections and serve a copy on counsel for Claimant. No further pleadings will be accepted, unless specifically authorized in advance. For purposes of this paragraph, a document will be considered to have been served on the date it was mailed. Any failure to object will be deemed a waiver and acquiescence.

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ANNE BEYTIN TORKINGTON
Administrative Law Judge